



SENATE JUDICIARY

COMMIT NO. 4

DATE 2/22/11

SB 308

MONTANA DEPARTMENT OF JUSTICE

SB 308: To Criminalize the Refusal to Take a Blood or Breath Test for Alcohol or Drugs

Background

In 2010, 2,859 drivers refused to take a breath or blood test after being stopped by law enforcement on suspicion of driving under the influence of drugs or alcohol. This number represents a trend of more than 2,800 refusals annually during 2008, 2009 and 2010 – the highest number of refusals recorded over a three-year period. In fact last year, more drivers refused to take the tests than were convicted of a first-offense DUI (2,650 convictions).

Weak penalties for refusing to take a breath or blood test have created a giant loophole in Montana law. Drunk drivers know they have a good chance of avoiding a DUI conviction – and taking responsibility for their actions – by refusing to submit to the tests that would clearly show whether they were guilty of driving drunk and putting other people's lives at risk.

Under existing law (Section 61-8-402, MCA), a driver who refuses a test simply faces an administrative penalty in the loss his or her license:

- 1st refusal – a suspension of 6 months, with no provision for a restricted probationary license
- 2nd or subsequent refusal within 5 years – a suspension of 1 year with no provision for a restricted probationary license

This “slap on the wrist” approach creates an incentive **not** to follow the law, and gives tacit approval to drivers who repeatedly drive drunk.

Montana Examples

Montana's driving records provide hundreds of examples of irresponsible drivers who have learned that it is to their advantage to refuse alcohol tests when they are pulled over. These drivers continue to drink and drive for decades, often without a license or insurance, and without regard for the law or the lives they are putting at risk.

- 52-year-old woman:
 - Refusals (5) – Aug. 1987; Mar. 1993; Nov. 1997; July 2003; Aug. 2010
 - DUI Convictions (4) – Oct. 1987; Mar. 1991; Jan. 19. 1995; Jan. 23 1995
- 47-year-old man:
 - Refusals (5) – July 2005; Oct. 2005; Nov. 2005; April 2009; Jan. 2010
 - DUI Convictions (3) – Mar. 2003; Dec. 2003; July 2005
- 59-year-old man:
 - Refusals (5) – Feb 1983; May 1983; Sept 1988; Sept 2001; May 2006
 - DUI Convictions (7) – Aug. 1986; July 1987; Dec. 1988; Jan. 1989; May 1993; May 1997; Oct. 1998

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